

Editor's note: Reconsideration granted; decision reaffirmed by order dated Dec. 29, 1982 -- See 67 IBLA 369A & B below; Editor's note: Overruled to the extent inconsistent with Pandora Petroleum Company, 74 IBLA 173 (July 13, 1983); appealed - reversed, Civ.No. 83-4-BLG, (D.Mont. July 23, 1984); reversed after third party appeal, No. 84-4199 (9th Cir. Aug. 6, 1985), 767 F.2d 1319

MONTY CRANSTON

IBLA 82-827

Decided October 7, 1982

Appeal from decision of Montana State Office, Bureau of Land Management, dismissing a protest against a simultaneous oil and gas lease offer. M 53319.

Affirmed.

1. Administrative Practice -- Appeals -- Board of Land Appeals

Where a protest filed against the issuance of an oil and gas lease alleges several specific reasons why the lease should not issue, and BLM dismisses the protest after due consideration of the reasons recited, and on appeal from such dismissal the protestant raises additional arguments and issues, the Board of Land Appeals need not adjudicate the issues raised for the first time on appeal, but may confine its review to the merits of those matters addressed in the decision which is the subject of the appeal.

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly signed by a corporate agent in accordance with 43 CFR 3112.2-1(b) where the space for the agent's signature contains the handwritten names of the corporation and the person signing on behalf of the corporation.

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

The 15-day period set out in 43 CFR 3102.2-6(b) for submission of the uniform agreement and list of names and addresses of simultaneous oil and gas lease applicants utilizing a leasing service for assistance in filing commences at the close of the simultaneous filing period, not at the time of actual filing of the applications, as all applications received during the simultaneous filing period are considered as received at the last minute of the filing period.

APPEARANCES: Monty Cranston, pro se; Milam Randolph Pharo, Esq., Denver, Colorado, for O. W. Morgan.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Monty Cranston has appealed the dismissal by the Montana State Office, Bureau of Land Management (BLM), of his protest against issuance of oil and gas lease M 53319 to O. W. Morgan whose application for parcel MT 69 was drawn with first priority in the September 1981 simultaneous oil and gas lease drawing. Appellant's application has second priority.

Following the September 1981 simultaneous drawing appellant sent several letters, one of which was labeled a protest, raising various issues with respect to the acceptability of applicant Morgan's simultaneous oil and gas lease application. By decision dated April 27, 1982, BLM addressed the alleged improprieties identified by appellant, found no violations of applicable regulations, and dismissed the protest. Appellant timely appealed to this Board.

[1] In his statement of reasons, appellant limits his appeal to three issues, one of which was not the subject of his protest and was not addressed by BLM in its decision. Counsel for applicant Morgan objects to the consideration of this issue because it was not raised in appellant's protest to BLM. Except in extraordinary circumstances, this Board does not adjudicate issues raised for the first time on appeal from denial of a protest and we decline to do so in this instance. Our review will be confined to the merits of those matters addressed in the BLM decision being appealed. Henry A. Alker, 62 IBLA 211 (1982).

Appellant alleges that O. W. Morgan's application was not signed in accordance with 43 CFR 3112.2-1(b). That regulation provides:

(b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the

applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

Examination of the Morgan application reveals that it was signed in the following manner. In the box labeled "Applicant's Signature," the name "O. W. Morgan" was handwritten in ink. In the box labeled "Agent's Signature," the name "N. C. Ciampa Federal Research Corp." was handwritten in ink. BLM held that this was sufficient to meet the requirements of the regulation.

Appellant argues that BLM must be able to determine with certainty from the face of the application who the signatory is and what the signatory's relationship to the applicant is. He notes that although the Ciampa signature was placed in the blank designated for an agent's signature, there is no express indication that she was signing as Morgan's agent, as the example in 43 CFR 3112.2-1(b) suggests is required, and she could conceivably have been signing in another capacity. Appellant also suggests that it is equally unclear whether Ciampa was acting individually or on behalf of Federal Research Corporation (FRC) since use of the corporation's name could "just as easily be * * * an address." In support of his argument, appellant refers the Board to its decisions in Vincent D'Amico, 55 IBLA 116 (1981), and Charles Goodrich, 60 IBLA 25 (1981).

In response, O. W. Morgan asserts that his application was properly signed. He urges that appellant appears to interpret the examples of acceptable methods of signing given in 43 CFR 3112.2-1(b) and in Vincent D'Amico, 55 IBLA at 123, as the exclusive methods for complying with the regulation and that such interpretation is incorrect. Morgan argues that an application need only be signed manually in ink, which was done, and rendered in a manner to reveal the name of the applicant (O. W. Morgan), the name of the signatory (N. C. Ciampa for FRC) and their relationship (agency). Morgan contends that use of the signature box labeled "Agent's Signature" makes the capacity in which the signatory is acting abundantly clear.

In the D'Amico case, the Board reviewed an application on which the following words had been handwritten in the box labeled "Agent's Signature": "FEC agent for D'Amico." "FEC" stands for Federal Energy Corporation, a filing service retained by the applicant, D'Amico. The applicant argued that the method of signing comported with the example in the regulations, "Smith, Agent for Jones." The Board found FEC's method of signing unacceptable because, unlike the regulatory example for an individual signing as agent for an individual applicant, the identification of the person signing on behalf of the corporate agent was not apparent. The Board stated:

If a person chooses to use a corporate filing service to act as his agent in preparing and filing an application for an oil and gas lease, that corporate agent must use the signature box marked "Agent's Signature" on form 3112-1 (June 1980). It is not enough, however, that the corporate name be handwritten in this box. There must also appear the holographic signature of the person authorized to sign on behalf of the corporate filing service. Ordinarily, such a corporate signature might take the form "John Brown, Vice President, Acme, Inc." See Anchors and Holes, Inc., 33 IBLA 339 (1978). The additional requirements

of 43 CFR 3112.2-1, requiring an application to be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship, suggest the following as an appropriate signature of a corporate filing service on behalf of Robert Jones, applicant: "John Brown, Vice President, Acme, Inc., agent for Robert Jones." [Emphasis in original.]

55 IBLA at 123.

In the Goodrich case, the Board was examining an application where the applicant's name had been handwritten in the "Applicant's Signature" box and "NCC/Federal Resources Corp." had been handwritten in the "Agent's Signature" box. The Board held that the applicant had not complied with 43 CFR 3112.2-1(b) because it could not be said with certainty that the letters "NCC" were intended to be initials of a person and even if they were they did not reveal the name of the particular signatory. 60 IBLA at 27 (1981).

Recently the Board has held that, under 43 CFR 3112.2-1(b), the signatory for a corporate applicant may use only a surname. Fred M. Garrett, 66 IBLA 42 (1982).

[2] There is no single correct method for complying with 43 CFR 3112.2-1(b) although some acceptable methods may better reveal the names of the applicant and signatory and their relationship. The examples given in the regulation are generally illustrative of the information necessary but do not reflect the only methods of signing. Since the regulatory requirements are not linked to a particular application format, the examples clearly may be adapted to provide the required information in the format of the application in use at the time of the drawing. 1/

Appellant also argues that the required information must be plain from the face of the application and he is correct. However, appellant also urges that we only look to what has been written on the application by the signatory and ignore the printed language of the application and as to that he is incorrect. The Morgan application clearly reflects the name of the applicant and the name of the signatory--"N. C. Ciampa Federal Research Corp." Given that the signatory placed her name in the box labeled "Agent's Signature," we conclude from the face of the application that she was acting in the capacity of an agent. It makes no difference to the acceptability of the signature whether she is the agent individually and has provided an address as appellant suggests or she is the person signing on behalf of the corporate agent as required in Vincent D'Amico, supra. It was not necessary that the details of the agency relationship be apparent from the signature as the applicant was required to provide an explanation of the relationship by 43 CFR 3102.2-6 (1981) 2/ and that was done.

1/ The form in use for the September 1981 drawing was issued in July 1980. 43 CFR 3112.2-1 was promulgated in May 1980.

2/ The requirement of filing an agency statement was eliminated from the regulations when revisions to 43 CFR Subpart 3102 were published on Feb. 26, 1982. 47 FR 8544.

[3] The final issue raised by appellant is whether the agency statement required by 43 CFR 3102.2-6 (1981) was timely filed. Since FRC is a leasing service that had various clients participating in the September 1981 simultaneous drawing, it chose to use the filing method described in paragraph (b) of that regulation. It states:

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

O. W. Morgan's application was dated September 9, 1981. BLM received FRC's submission on October 5, 1981. Appellant urges that since more than 15 days had passed it was not timely. The Board has held that all simultaneously filed applications are considered received at the close of the filing period and that the 15-day period provided by 43 CFR 3102.2-6(b) (1981) commences at the close of the filing period. Fred M. Garrett, supra; Robert E. Davis, 65 IBLA 135 (1982). The simultaneous filing period for the September 1981 drawing closed on September 22, 1981, and therefore FRC's submission was timely.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

Will A. Irwin
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GRANT CONCURRING:

I agree with my colleagues that the protestant has failed to make a case that the first drawn applicant for this lease was not also the first qualified applicant. Therefore, the decision appealed from must be affirmed. However, I do not believe that we are free to ignore the contention raised by appellant in the statement of reasons for appeal that the participation of the signatory for Morgan's agent in the drawing through the filing of a competing application for the same parcel created an improper multiple filing proscribed by 43 CFR 3112.6-1(c).

Although the Secretary of the Interior has the discretion whether to issue an oil and gas lease for lands not within the known geological structure of a producing oil and gas field, he is required by statute, 30 U.S.C. § 226(c)(1976), to issue a lease for such lands to the first qualified applicant therefor. Udall v. Tallman, 380 U.S. 1, 4 (1965). The Secretary is bound by his regulations and may not depart from the policy of rejecting applications which are in violation of the regulations. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). When the protestant who is the applicant receiving second priority has alleged that the first drawn applicant is not the first qualified applicant based on facts as to which there is no dispute (as opposed to mere speculation), I believe that the legal argument should not be ignored on appeal on the basis that it was not one of the grounds for protest raised before BLM. I would not seek to overrule our holding in Henry A. Alker, 62 IBLA 211 (1982), but, rather, I believe it is properly applied where allegations raised for the first time on appeal by protestant are either speculative or cannot be adequately resolved without elaboration of the record by BLM upon initial consideration of the matter.

Appellant has raised nothing on appeal which would take this case outside the scope of the Board's holding in Ervin J. Powers, 45 IBLA 186 (1980), on the issue of an improper multiple filing. Thus, the decision of BLM must be affirmed.

C. Randall Grant, Jr.
Administrative Judge

DEC 29 1982

IBLA 82-827 9 67 IBLA 364	:	M 53319
	:	
MONTY CRANSTON	:	Oil and Gas Lease
	:	
	:	Petition for Reconsideration
	:	granted; Decision re-affirmed

ORDER

Monty Cranston has filed a petition for reconsideration of our decision of October 7, 1982, Monty Cranston, 67 IBLA 364, along with various supporting memoranda. O. W. Morgan has filed a response.

Cranston urges that, since Nancy Ciampa of Federal Research Corporation (FRC) both filed her own application for the September 1981 simultaneous drawing for parcel MT 69 and signed on behalf of FRC when it prepared O. W. Morgan's application, there has been a violation of 43 CFR 3112.2-1(f). However, under the circumstances of this case neither Ms. Ciampa nor FRC has an interest in Morgan's application as interest is defined in 43 CFR 3100.0-5, nor does Morgan in Ciampa's. Question (f) on the application applies to the applicant, Morgan, not the signatory of the company that filed on his behalf. And Morgan would not acquire an interest in Ciampa's application, should it be drawn with first priority, on principles of constructive trust, since FRC is his agent, not Ciampa, and Ciampa would not be obligated to assign her lease to FRC if she were successful.

Cranston also suggests that because FRC filed two applications on behalf of another person, Johnson, all persons for whom FRC filed, including Morgan, should be disqualified. Such a remedy would be inappropriate. The appropriate sanction if Johnson were successful in these circumstances would be to disqualify him because he made two filings. It is none of Morgan's doing that FRC filed twice on Johnson's behalf. G.B. Lee, 3 IBLA 171, 175 (1971).

Finally, Cranston apparently understands our previous decision to have said that an applicant may indicate the relationship between a filing service and himself on materials submitted in accordance with 43 CFR 3102.2-6 in lieu of doing so on the application form itself as required by 43 CFR 3112.2-1(b). We did not and do not so hold. We did hold and do hold that the statement of relationship between Morgan and his agent was adequately indicated on the drawing card and that the details of this relationship (e.g., that Ciampa is authorized to sign for FRC) may be set forth in materials submitted in accordance with 43 CFR 3102.2-6.

67 IBLA 369A

We have considered all arguments offered by Cranston on these issues and those arguments disputing our conclusions in our original decision, and we have reconsidered that decision in full. We find that no constructive purpose would be served by ordering oral argument in this case as the issues have been fully briefed by the parties. For the reasons stated in our original decision and in this order the decision of the Montana State Office is reaffirmed.

Will. A. Irwin
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

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67 IBLA 396B

